Filed 3/29/19 Daniels v. Kelley CA4/3

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

MARK DANIELS, Plaintiff and Respondent, v. NEAL KELLEY, as Registrar of Voters, etc. Defendant and Respondent; LENORE ALBERT, Real Party in Interest and Appellant.	G056153 (Super. Ct. No. 30-2018-00980421) O P I N I O N

Appeal from postjudgment orders of the Superior Court of Orange County, Craig L. Griffin, Judge. Dismissed.

Lenore L. Albert, in pro. per., for Real Party in Interest and Appellant.

Law Office of Gregory A. Diamond and Gregory A. Diamond for Plaintiff and Respondent.

No appearance for Defendant and Respondent.

As a candidate for Orange County District Attorney in the 2018 elections, Lenore Albert sought to have her ballot designation listed as "Civil Rights Attorney." Mark Daniels, a registered voter, filed a petition for writ of mandate arguing Albert should be removed from the ballot because her license to practice law had been suspended or, in the alternative, the "Civil Rights Attorney" designation should be removed from the ballot. The court granted the petition in part and ordered the Orange County Registrar of Voters (Registrar) to strike Albert's ballot designation of "Civil Rights Attorney." The court also denied Albert's ex parte application seeking to use the alternative ballot designation of "Civil Rights Advocate." Albert appeals from the orders, contending the court erred by failing to allow her to submit an alternative designation. Among other things, she argues the court's ruling was "based on a pattern and practice of depriving candidates in Orange County" of their First Amendment rights and constitutional rights to equal protection. As explained below, we can no longer grant any effective relief to Albert and, accordingly, we dismiss the appeal as moot.

FACTS

Relevant Proceedings Regarding Albert's Suspension from the Practice of Law

In June 2017, the review department of the California State Bar (State Bar) issued an opinion finding Albert failed to cooperate with a State Bar investigation and to obey superior court orders to pay sanctions. The review department recommended Albert "be suspended from the practice of law for one year, that execution of that suspension be stayed, and that she be placed on probation for one year . . . ." The opinion listed a number of conditions, including a requirement that Albert "be suspended from the practice of law for a minimum of the first 30 days of her probation" with suspension continuing until she paid three monetary sanctions awards in a civil action among other

things. The opinion also stated, "The period of probation will commence on the effective date of the [California] Supreme Court order imposing discipline in th[e] matter."

In December 2017, the California Supreme Court denied Albert's petition for review and imposed the discipline recommended in the June 2017 State Bar opinion. The Supreme Court ordered Albert to be "placed on probation for one year subject to" certain conditions. Albert was suspended from the practice of law for a minimum of 30 days, and her suspension was to continue until she paid the court-ordered sanctions in a civil action. The Supreme Court denied Albert's petition for rehearing on February 14, 2018.

As of early March 2018, the State Bar Web site reflected Albert's status as active. However, a March 20, 2018 letter from the State Bar's office of probation to Albert stated in relevant part: "As you know, on December 13, 2017, the Supreme Court of California filed an Order suspending you from the practice of law for a period of one year, staying execution and placing you on probation upon certain conditions for a period of one year. Further, pursuant to the Order of the Court, you have been placed on actual suspension for the first thirty days of probation, and you will remain suspended **until** you pay the sanctions as listed in your Order, and provide satisfactory proof thereof to the Office of Probation." After noting the Supreme Court denied Albert's petition for rehearing on February 14, 2018, the letter further stated: "The State Bar Court has calculated that your effective date is **February 14, 2018**. You may wish to check your public attorney profile on the State Bar's website for any changes to your status."

Petition Challenging Albert's Ballot Designation

On March 9, 2018, Albert submitted a declaration of candidacy to run for Orange County District Attorney in the June 2018 primary election. She listed her ballot

designation as "Civil Rights Attorney." Relying on Elections Code section 13314,[1] Daniels filed a petition for a writ of mandate arguing Albert's declaration of candidacy was "fraudulent or otherwise fatally defective . . . because she was suspended from the practice of law by order of the California Supreme Court and the California State Bar on February 14, 2018." Daniels claimed Albert was still suspended from the practice of law and requested the court order the Registrar to remove Albert from the ballot. In the alternative, Daniels requested the court order the Registrar to remove the words "Civil Rights" from Albert's ballot designation because there was "no evidence that she [had] worked in Civil Rights law while there [was] much evidence that she [had] worked in the area of Consumer Rights law."

About two weeks later, Daniels filed a brief in support of his petition. In addition to repeating his argument that Albert should be removed from the ballot because she was suspended from practicing law, he alternatively argued the court should order the Registrar to remove the complete designation of "Civil Rights Attorney."

In April 2018, Albert filed an opposition arguing there was nothing misleading about her designation of "Civil Rights Attorney" because she had civil rights experience. With respect to her suspension from the practice of law, she claimed she was only required to be admitted to practice law "in the Supreme Court of [California]" and did not need to be eligible to practice law at the time she submitted her declaration of candidacy. She also pointed to the State Bar Web site, which reflected her status was active when she submitted her declaration of candidacy on March 9, 2018. She further contended the State Bar and California Supreme Court did not establish the start date for her probation and suspension or provide her with notice of her suspension.

After a hearing on the petition, the court issued a minute order granting the petition in part. The court found: "Albert had already been suspended from the practice

---

[1] All statutory references are to the Elections Code.

of law at the time she filed her candidate statement and remains so to this day." The court disagreed with Albert's argument that she had not yet been suspended because the California Supreme Court's rehearing denial order did not indicate probation had commenced. In reaching this conclusion, the court held: "Her suspension was imposed on February 14, 2018, a fact confirmed by the current State Bar website and a letter provided by the State Bar. That the State Bar was tardy in updating its website status for . . . Albert does not alter her suspension date."

The court also found: "To the extent that . . . Albert may be contending that the status of 'attorney' can be used under the prong of the 'principal professions . . . of the candidate during the calendar year immediately preceding the filing of the nomination documents' [citation], [California Code of Regulations, title 2, section 20714, subdivision (b)(2)] creates a restriction not just on the 'current' profession but on the candidate's ability to invoke her status as attorney as a 'principal' profession in general." Given Albert's suspension, the court ordered the Registrar to strike the ballot designation of "Civil Rights Attorney" and indicated the minute order constituted "the formal order and Writ of Mandate." The court ultimately allowed Albert's name to remain on the ballot in light of the possibility she could be qualified to act as an attorney by the time of the election.

Albert then filed an ex parte application requesting the court allow her to use the ballot designation of "Civil Rights Advocate." The court denied the ex parte application, and Albert filed a notice of appeal from the court's orders granting the petition in part and denying Albert's ex parte application.

DISCUSSION

Albert contends the court erred by striking her ballot designation and not allowing her to submit an alternative designation. According to Albert, the court should

have directed the Registrar to comply with section 13107, subdivision (f).[2] By failing to do so, Albert claims the court's ruling "was based on a pattern and practice of depriving candidates in Orange County of their civil rights to core political speech." She also argues "Orange County's interpretation of [section] 13107 fails to put any meaning in [subdivision] (f)" and results in the unequal treatment of candidates "in violation of equal protection of their fundamental rights." She further contends the court erred because California Code of Regulations, title 2, section 20714, subdivision (d) allows a candidate to "use a ballot designation consisting of his or her principal professions, vocations or occupations, which the candidate was principally engaged in during the calendar year immediately preceding the filing of the candidate's nomination papers." Finally, she challenges the validity of her suspension from the practice of law and claims Daniels failed to prepare a proposed judgment or writ of mandate.

Based on these purported errors, Albert requests we: (1) reverse "the order with directions to the Orange County Superior Court to incorporate [section 13107, subdivision] (f) in all future writ of mandate proceedings where the ballot designation is stricken"; (2) require the Registrar to "return the writ of [m]andate to the court to ensure . . . candidate[s] timely received the notice"; (3) find "petitioner[s] must prepare an adequate proposed judgment and writ of mandate"; (4) find "no court can use a back dated suspension as a basis to take away that licensed professional's ballot designation"; and (5) "conclude . . . if the petitioner does not bring the entire ROV file or other

---

[2] Section 13107, subdivision (f)(1) provides: "If, upon checking the nomination documents and the ballot designation worksheet described in Section 13107.3, the elections official finds the designation to be in violation of any of the restrictions set forth in this section, the elections official shall notify the candidate . . . . [¶] (1) The candidate shall, within three days, . . . appear before the elections official . . . and provide a designation that complies . . . ."

administrative file for consideration on a ballot change, then the record is insufficient as a matter of law on a ballot designation challenge."[3]

Albert's contentions are moot as there is no effectual relief we can provide her. Courts """"ordinarily may consider and determine only an existing controversy, and not a moot question or abstract proposition."""" (*Consumer Cause, Inc. v. Johnson & Johnson* (2005) 132 Cal.App.4th 1175, 1183.) A question becomes moot when the appellate court cannot grant any effectual relief or render an opinion affecting the matter. (*Lester v. Lennane* (2000) 84 Cal.App.4th 536, 566.) So it is here. A ruling on the merits would have no effect on Albert's candidacy because the election already has been held and Albert did not prevail.

Relying on an exception to the mootness doctrine, Albert contends the appeal is not moot because "[t]he case presents an issue of broad public interest that is likely to recur" and "[t]here is also a possible recurrence of the controversy between the parties." We find no merit in Albert's argument. This is a routine dispute over a ballot designation, and no matter of broad public interest is being litigated. In our view, the issues specific to this case — her suspension from the practice of law — are not likely to recur.

While Albert also raises a host of challenges, including constitutional issues, the record fails to show the court considered or ruled on these issues, and we do not issue advisory opinions. (*Torres v. City of Yorba Linda* (1993) 13 Cal.App.4th 1035, 1046 ["The courts of this state are not authorized to issue advisory opinions"].) Rather than promptly challenge the court's determination in a writ proceeding, Albert filed a

---

[3] Albert also filed two requests for judicial notice requesting we take judicial notice of various documents, including, among other things, orders in other cases, screenshots of her State Bar profile, documents related to the court-ordered sanctions she was required to pay, and policies and procedures of the California State Bar Probation Department. We deny the requests as unnecessary to resolve the appeal.

notice of appeal and now seeks an order suggesting broad remedies for unknown future cases. We decline to adjudicate the merits of future hypothetical cases as Albert requests.

Finally, we reject Albert's attempt to re-litigate the underlying validity of her suspension. She argues the State Bar could not have withheld her license because she filed for bankruptcy, which prevented her suspension given that the court-ordered sanctions were dischargeable debts. She also claims the State Bar proceedings were premised on invalid sanctions orders. We are not in a position to entertain a collateral attack on Albert's suspension or a claim contesting the State Bar's policies and procedures. And, as explained above, the issue is moot because the election has passed. Given our resolution of the mootness issue, we need not address other matters, including Albert's numerous challenges to the court's orders.

DISPOSITION

The appeal is dismissed. Respondents shall recover their costs incurred on appeal.

IKOLA, J.

WE CONCUR:

ARONSON, ACTING P. J.

FYBEL, J.